

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

## HOUSTON DIVISION

IN RE: § CASE NO. 21-60082-11  
§ HOUSTON, TEXAS  
GROVER ENTERPRISES, LLC, § WEDNESDAY,  
§ SEPTEMBER 22, 2021  
DEBTOR. § 11:00 A.M. TO 11:47 A.M.

MOTION HEARING (VIA ZOOM)

BEFORE THE HONORABLE CHRISTOPHER M. LOPEZ  
UNITED STATES BANKRUPTCY JUDGE

12 APPEARANCES... SEE NEXT PAGE

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(Recorded via CourtSpeak)

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34 ALSO APPEARING:

35 Michael Chang  
36 David Tang  
37 Brad Shepherd

38 (Please also see Electronic Appearances.)

1                   HOUSTON, TEXAS; WEDNESDAY, SEPTEMBER 22, 2021; 11:00 A.M.

2                   THE COURT: Okay. Good morning, everyone. This  
3 is Judge Lopez. Today is September 22nd. I'm going to call  
4 the 11:00 a.m. docket, and that is 21-60082 Grove  
5 Enterprises, LLC. Here, originally, on a status conference  
6 that was requested, but since then there was an emergency  
7 motion to dismiss this case by Mr. Seth Kretzer, I believe  
8 is the receiver.

9                   So let me go ahead and just take appearances and  
10 let's see -- is someone here on behalf of the Debtor?

11                  MR. SINGH: Yes, Your Honor. Brendon Singh on  
12 behalf of Grove Enterprises --

13                  THE COURT: Okay.

14                  MR. SINGH: -- in the bankruptcy case.

15                  THE COURT: Good morning, sir.

16                  I also ordered Mr. Michael Chang to be present for  
17 today. Is Mr. Chang here, Michael Chang?

18                  MR. SINGH: He is, Your Honor. Mr. Chang is here  
19 on and on the line and on the video.

20                  THE COURT: I see him. I see him on video. Good  
21 morning, sir. Thank you for the -- thank you.

22                  MR. CHANG: Thank you.

23                  THE COURT: Okay.

24                  Mr. Kretzer, I'll go ahead and take your  
25 appearance.

1 MR. KRETZER: Good morning, Your Honor. Seth  
2 Kretzer state court-appointed Receiver.

3 THE COURT: Okay.

4 And Mr. Ruff, good morning.

5 MR. VOLBERDING: And Your Honor, my name is James  
6 Volberding. I am representing Mr. Kretzer. I'm his law  
7 partner.

8 THE COURT: Ah, perfect. Good morning, sir.

9 MR. VOLBERDING: Thank you, sir.

10 THE COURT: Okay. Mr. Ruff, now I'll let you go.

11 MR. RUFF: Yeah. Good morning, Your Honor. Jason  
12 Ruff on behalf of the U.S. Trustee.

13 THE COURT: Okay. Mr. Cornwell, do you wish to  
14 make an appearance?

15 MR. CORNWELL: I do, Your Honor. Thank you. John  
16 Cornwell on behalf of BRMK Lending, LLC. -- the most --

17 THE COURT: Mr. Cornwell, I know who you're  
18 representing through the pleading, but I couldn't hear you  
19 too clearly. Do you mind just stating it again? At least  
20 to me it was breaking up on my end.

21 MR. CORNWELL: Of course, Your Honor. This is  
22 John Cornwell, again, representing BRMK Lending, LLC. And  
23 Your Honor, also on phone Sameer Karim, one of my litigation  
24 colleagues that has had the fortune of being involved  
25 through the history of this case. And on phone and by video

1 is another litigation colleague Aynsley Young all on behalf  
2 of BRMK Lending.

3 THE COURT: Okay. Good morning.

4 Does anyone else wish to make an appearance this  
5 morning in connection with this case?

6 MR. TANG: Your Honor, My name is David Tang. I  
7 represent Harold Poke and Grove Enterprises in some state  
8 district court actions. I'm their lawyer before this  
9 purported and disputed assignment that they pulled out last  
10 week to stop the foreclosure. So I'm trying to figure out  
11 where I stand in all this, because we kind of joined in the  
12 receiver's motion. I got a copy of the pleading -- the  
13 complete pleading last night from everybody. I wasn't on  
14 any emailing list. Not anybody's fault or anything it just  
15 again just me didn't activate my bankruptcy account, again.

16 THE COURT: Yeah. No, no, no.

17 MR. TANG: -- my pace account.

18 THE COURT: Understood. And thank you. And to  
19 the extent that there is somebody who wishes to make an  
20 appearance today that would need to file a pro hoc, that is  
21 waived today. You're free to appear today, this is an  
22 emergency motion, and I just think what we're discussing is  
23 really important. So there's no need to file anything or  
24 have to worry about any of that today. Okay.

25 MR. TANG: Thank you -- I appreciate --

1 MR. SHEPHERD: Good morning.

2 THE COURT: Good morning, Mr. Shephard.

3 MR. SHEPHERD: Good morning, I'm Branch Shephard  
4 and I represent -- in the state court litigation.

5 THE COURT: Did you say Daiyo (phonetic)?

6 MR. SHEPHERD: Yes, sir. Daiyo Holdings and --  
7 Daiyo as a junior lien holder it's important to be around.

8 THE COURT: Okay. Good morning. Does anyone else  
9 wish to make an appearance?

10 And for those that are on the line, there's no  
11 need to hit five-star your line is completely unmuted, and I  
12 hope to keep it that way just to let the parties speak. I  
13 just ask everyone to please keep your phone on mute until  
14 it's your turn to speak, so that way we can just minimize  
15 background noise. So anyone else wish to make an appearance  
16 and there's no need to hit five-star?

17 Okay. Mr. Singh, why don't you just talk to me  
18 kind of about this case at the 10,000-foot level?

19 MR. SINGH: Happily, Your Honor.

20 THE COURT: Starting there and kind of where we  
21 are and then I will turn to Mr. Volberding --

22 How do I pronounce your last name, sir? I want to  
23 make sure I got it right. Is it Volberding? You're on  
24 mute, sir. I muted you and I told you I -- sorry about  
25 that.

1                   MR. VOLBERDING: I apologize. Volberding, you did  
2 it exactly right. Mr. V. is perfectly fine --

3                   THE COURT: No, no, Volberding --

4                   MR. VOLBERDING: -- that works just as well.

5                   THE COURT: -- I just want to make sure I  
6 pronounce it correctly. I'm going to be very respectful.  
7 So thank you very much. So I'll turn to you next and then  
8 I've got a couple of comments before we officially get  
9 started, okay?

10                  MR. VOLBERDING: Thank you, sir.

11                  MR. SINGH: All right.

12                  THE COURT: Mr. Singh, good morning.

13                  MR. SINGH: Thank you, Your Honor.

14                  So Your Honor, this is sort of -- I requested a  
15 status conference and we took a little bit of time just so  
16 we set the stage. When this case was filed it sort of had a  
17 lot of tentacles to it and so we -- I was able to reach out  
18 to Mr. Cornwell for the first lien hold in this case. I  
19 actually got a chance to speak to Mr. Tang and Mr. Polk and  
20 I reached out to their receiver a little bit later on but  
21 wasn't able to get ahold of him at that time.

22                  So here is sort of where this is. The main -- and  
23 this has gone on for some time and the litigation has gone  
24 on pretty far. The main issue, I think, we have before the  
25 court and I had sort of extensive conversations with the USD

1 and I think everyone involved on whether authority to sort  
2 of put the company into bankruptcy again. So here's sort of  
3 when it's --

4           So the main documents that we have that are at  
5 issue here are a couple loan agreements and one from 2017,  
6 pledge of assignment of equity interest and a pledge of  
7 assignment of equity interest in 2019. And before I go any  
8 further, Mr. Tang and Mr. Polk -- just so I have -- the  
9 Court understands where they are, they believe that all of  
10 the documents including these documents and the documents  
11 from the first lien holder, Mr. Cornwell's client, they --  
12 allegations from their standpoint is that all of those  
13 documents are fake and fraudulent, at least they weren't  
14 supposed to be done to a certain extent. So just so that  
15 when we're talking about them, that's their stance so the  
16 Court understands where they're coming from.

17           The steps forward in the state court, lots of  
18 things went on in the state court, and the second lien  
19 holder on this -- property in 2019, let me back up a little  
20 bit just so everyone is clear. 2019 there was a deal to  
21 purchase 411 North Main which is sort of the property that's  
22 at issue here. That property was originally supposed to be  
23 bought -- the pleadings and the documents are somewhere  
24 between I think the contract says \$7.5 million. That  
25 contract was supposed to be funded by Mr. Cornwell's client

1 Broadmark or BMRK [sic] I just know them as Broadmark. BMRK  
2 [sic] put in sort of approximately about \$408 million, Mr.  
3 Polk was supposed to then put in \$305 million. Something  
4 happened and a really large contention of what happened at  
5 the title company in terms of documents being signed days  
6 they were supposed to be signed.

7           But the best that I can sort of unravel is that  
8 Mr. Polk signed some documents on January 11th, 2019. It  
9 was supposed to fund the other half of the loan, that didn't  
10 happen, the documents went back and forth over the next  
11 week, and the deal eventually closed I think somewhere  
12 around the 18th or the 17th and the confusion in the  
13 documents are sort of just bad. Some of the documents --  
14 the documents all had the 7th -- January 17th of 2019, and  
15 some of them were marked out and then 18 was written in. So  
16 the documents are sort of bad and that's sort of I think  
17 where a lot of this comes about.

18           Along with those documents, is a pledge agreement  
19 in '19 and there was a deal with Mr. Polk, an entity back in  
20 2017, when he pledged all of his interest in Grove  
21 Enterprises to two different companies, at the time, all  
22 basically controlled by -- for today's hearing let's say Mr.  
23 Chang's sort of in control of those. There's another  
24 individual Ali Chandry (phonetic) who technically runs them,  
25 but Mr. Chang is sort of the manager of those companies.

1           So what happened? After trying to foreclose and I  
2 think the state court -- the state court appointed a  
3 receiver to collect rent on these properties and they were  
4 sort of kicking back and forth. And the state court didn't  
5 really make a decision on whether the documents were  
6 fraudulent or not, but the state court said it can go  
7 foreclose. So both of these properties -- both lien  
8 holders, first and second, posted the property for  
9 foreclosure and my clients ended up looking at getting  
10 advice from corporate counsel on whether the -- whether they  
11 can accept the pledge and assignment and what that would do.

12           From sort of 10,000-foot level the position is  
13 that they accepted those pledges, both the '17 and the '19  
14 on the basis that just out of abundance of caution, we're  
15 going to accept the interest in both. They then became 100  
16 percent interest holder in Grove Enterprises which then they  
17 held a meeting and removed Mr. Polk and appointed Mr. Chang,  
18 and then Mr. Chang put the company into bankruptcy.

19           THE COURT: So, Mr. Singh -- Mr. Singh, let me ask  
20 you. Is there a governing security agreement that governs  
21 when a pledge can be used or under what instances or do  
22 these documents -- we're not talking evidence. I just want  
23 to understand your position. So there was a default that  
24 occurred and then, if I were then to look at the assignments  
25 and the pledges, they would then indicate when someone could

1 use this as default? Or is there another document out there  
2 that governs that? I just want to understand what it is  
3 that -- it's you-all's position.

4           If I understand it correctly, that these documents  
5 allowed the assignment to occur upon some event, that event  
6 occurred, Mr. Change was then assigned all of the rights and  
7 interest to Grove, Mr. Polk was then put out, and then Mr.  
8 Chang authorized the filing of the bankruptcy case, is that  
9 correct?

10           MR. SINGH: That's basically correct. There are  
11 some names differences obviously, but not Mr. Chang  
12 specifically but a different company. But Yes, Your Honor.

13           THE COURT: Correct.

14           MR. SINGH: In general --

15           THE COURT: Correct. I agree.

16           MR. SINGH: -- in general, yes. The documents --  
17 the pledge agreements are such that if there's a default and  
18 in 2018 -- for the '17 default in 2018, Mr. Polk signed an  
19 acknowledgement that the 2017 loan that was in default was  
20 in default. And again, just so that I'm clear, I'm not  
21 trying to mislead the Court or anything, Mr. Polk believes  
22 all of those documents or at least the -- all of those  
23 documents that I'm talking about right now are fraudulent  
24 documents just so that it doesn't seem like I'm not -- I'm  
25 disregarding that argument.

1                   THE COURT: No, no, no. I understand. Okay.

2 Thank you.

3                   MR. SINGH: And so yeah, unfortunately we would  
4 hope that -- have better documents in terms of something  
5 that sort of lays that out, but the lead -- the pledge and  
6 assignment agreement does have in the event of default then  
7 they can in essence accept those pledges and assignments.

8 And so the basic argument is --

9                   THE COURT: Mr. Singh, are you sure about that?

10                  MR. SINGH: -- Your Honor --

11                  THE COURT: You sure about that?

12                  MR. SINGH: And that's sort of when we filed the  
13 bankruptcy my belief is that it was. I am just a bankruptcy  
14 lawyer, but corporate counsel has sort of gone through the  
15 process and said, yes that's sort of how that works and  
16 that's the belief that Mr. Chang and I have and that's sort  
17 of how we're operating.

18                  THE COURT: Okay.

19                  MR. SINGH: Why I set this status conference  
20 initially was, I sort had gone through that process with Mr.  
21 Cornwell. We had talked about first let's figure it out,  
22 what we do -- is there a global settlement, is there a way  
23 to get this resolved? And so what we had looked at was and  
24 that's sort of how it was filed, the CRO motion was sort of  
25 put in place. That was more of a -- this is where we

1 thought this fight was going to come from when I talked to  
2 Mr. Cornwell was this is -- I don't know that we -- we have  
3 our positions they have their positions, it's different than  
4 our position. And so if they listen as we're going down  
5 that road let's figure out because the company still needs  
6 be up and running. We were hoping to get a status  
7 conference last week but when I spoke to Mr. Chang -- Mr.  
8 Tang he was going to be out of town --

9 THE COURT: Yeah.

10 MR. SINGH: -- so that's the reason for the  
11 later --

12 THE COURT: Right.

13 MR. SINGH: I want to make sure -- and what I was  
14 hoping to do today, Your Honor, was set a hearing on a date  
15 that everyone could come and say all the things they want to  
16 say about authority to file, we can tee that up, the Court  
17 could make a decision on that -- we could be right, we could  
18 be wrong -- the Court makes a --

19 THE COURT: Right.

20 MR. SINGH: -- decision. And then from there we  
21 go where we go and everyone has the ability to kind of say  
22 what they want to say and enough time to get all the things  
23 on plate and get all the things on board. And but I think  
24 this has been --

25 THE COURT: So Mr. Singh, let me ask you one

1 question.

2 MR. SINGH: Uh-hu.

3 THE COURT: I get that, and I think that makes  
4 sense. Talk to me about the September 3rd filing petition.  
5 That's going to come up so you might as well give me the  
6 10,000-foot level. I don't see any signatures on that  
7 petition and that's been raised -- so why don't you tell me  
8 about that.

9 MR. SINGH: So that was -- that was a purely a  
10 mess up in my office. That was a September 7th, we got all  
11 the documents probably about an hour before the case was  
12 filed, and I just uploaded the wrong document. So I had  
13 everything, but the document -- if the Court looks I think  
14 it got filed somewhere on eight minutes before. We had  
15 filed -- I can file the signatures. I have them. It's just  
16 I didn't actually realize we filed the wrong document just  
17 because we were moving so quickly.

18 THE COURT: Right.

19 MR. SINGH: That is purely my fault on that  
20 document being filed.

21 THE COURT: So let me ask you as well, the  
22 estimated assets that are checked on either this one or the  
23 amended, says 0 to 50,000. I think in the motion, I know  
24 I'm jumping ahead -- there's a CRO motion where you're  
25 seeking to sell something for about half a million. So

1 what's -- I'm just trying to understand the size of the  
2 case.

3 MR. SINGH: So and this is --- and just the way we  
4 came in, in terms of because -- again it's undisputed Mr.  
5 Polk was running this company but for and until those liens  
6 -- those assignments were accepted. So the main  
7 (indiscernible) that we know of and I have a motion to  
8 extend the deadline but I didn't file -- when this motion  
9 came down, I sort of said, okay, let me pause on all of  
10 those. And I don't want it to look as though I'm trying to  
11 railroad over anyone in terms of their ability to come fight  
12 and say no this -- should be dismissed and so I have all of  
13 those. One of them is how (indiscernible). The second is a  
14 motion to extend time.

15 The main asset that I believe is here is the  
16 building at 411 North Main that the receiver is collecting  
17 all the rent on. At this moment in time, I believe from the  
18 receiver's notices in the state court, there's approximately  
19 \$200,000 worth of rent that the receiver is collecting. The  
20 value of that building is sort of at this point in time  
21 contested I guess -- it was sold in 2019, for 7.5 million.  
22 The appraisal at the moment is 4.2 million, is my  
23 understanding, and there's a huge leak and a roof problem  
24 that's going to cause about \$500,000.

25 So when I got onto the case one of the hopes was

1 that with Mr. Cornwell's client is that we would -- my  
2 client would be willing to do a DIP loan, get the roof  
3 fixed, get the place sort of pinned up sort of say and then  
4 sell it for enough to pay off all the DIP. And that's sort  
5 of what we were rounding about before I spoke to Mr. Chang  
6 and he sort of -- he told me that their stance of the  
7 documents were not accurate or fraudulent documents.

8 THE COURT: Got it.

9 MR. SINGH: And so --

10 THE COURT: Okay.

11 MR. SINGH: -- that's sort of why I sort of paused  
12 and backed up because I didn't want it to seem as though we  
13 were just sort of plowing forward and didn't listen to all  
14 the folks that we sort of circled up with and again I'll  
15 just go over the --

16 THE COURT: I understand.

17 MR. SINGH: -- and sort of given that same  
18 overview of here's where I think we are, here's where -- I  
19 want everyone to be able to come tell the Court what it is  
20 they want to tell them, they have their day in Court, and  
21 they have the opportunity to make all of those statements.  
22 We can then defend those statements. We win or we lose, and  
23 then we go on down the road. But the CRO motion I wanted to  
24 make sure I copied, because there are things -- there's rent  
25 being collected and things being there.

1           There is a state court receiver, but the state  
2 court receiver -- in the state court receiver appointment  
3 only allows them to do a certain thing, mainly collect rent,  
4 try to make a settlement, allow the foreclosure, pay  
5 utilities. And so when I spoke with Mr. Cornwell in terms  
6 of someone who one had the ability to do it, and two sort  
7 off had the cost structure that I think we're looking at the  
8 same rate as the receiver \$350 -- we pitched -- we talked  
9 about folks that would be in that range, that had some  
10 bankruptcy experience that would be able to do what needed  
11 to be done. And we sort of coalesced on Mr. Quinn  
12 (phonetic) and that's how he came about.

13           And that's primarily just because we wanted --  
14 that was more of a we wanted someone that -- both of the  
15 parties --

16           THE COURT: Okay

17           MR. SINGH: -- in this litigation, like most  
18 litigation, don't like each other, no one likes each other.  
19 Fortunately Mr. Cornwell has a pretty good relationship and  
20 so we sort of talked that through and we thought that would  
21 have been a good way to go, and that's why that motion got  
22 filed. But I still think the lynch pin issue is the  
23 authority and then we can push all those things. Because if  
24 the Court finds that we did have authority and we are wrong,  
25 then I think that none of the other motions matter. If

1 although the Court finds that we are right and we have the  
2 authority, then we don't want to wait on some of those  
3 things to get going and that's sort of how we have that teed  
4 up in that manner, Your Honor.

5 THE COURT: Yeah. Yeah. I get it. Okay.

6 Mr. Volberding, let me give you an opportunity to  
7 tell me anything you want, respond how you want, the floor  
8 is yours.

9 MR. VOLBERDING: Thank you, sir. Can you hear me?

10 THE COURT: Yeah.

11 MR. VOLBERDING: -- Can you hear me okay, sir?

12 THE COURT: Yeah. And again, at this point I  
13 don't want to -- you don't have to kind of introduce any  
14 evidence, I don't want to get into that, I just want to kind  
15 of keep it high level and give you an opportunity to address  
16 the Court. Thank you.

17 MR. VOLBERDING: Yes, sir. High level, very high  
18 level. I think what is before you, Judge Lopez, is this.  
19 Is that a second tier creditor -- a second tier secured  
20 creditor who lost in state court twice, in two different law  
21 suits, who did not file a motion for a new trial, who did  
22 not seek relief from either of the two Houston Court of  
23 Appeals is seeking to make an end run around those state  
24 court rulings. And is seeking, as a creditor, to come in  
25 and do an involuntary bankruptcy action against the debtor

1 in violation of all the strictures of section 303. I based  
2 that ascertain on really three concepts. Three high level  
3 concepts here.

4 Number one, is that I'm going to use Chawdry  
5 (phonetic) as the party here, because I think that's what's  
6 really driving all of these. Mr. Chawdry, his claims, if  
7 you want to use that term broadly, his claims to seize Grove  
8 and therefore seize the six-story office building, are all  
9 barred by state law procedure and substandard law. I've  
10 laid that out in the motion in my response. And I note you  
11 very well understand that state law controls. There's state  
12 law property, there is no federal property rules, and I so I  
13 know you're familiar with those rules. But all of that  
14 litigation X where he had the opportunity to litigate this  
15 so-called claim, based on these so-called equity release  
16 agreements. He waived them, he defaulted them, they were  
17 mandatory counter claims, none of these documents are  
18 recorded, we didn't see any of these documents until  
19 yesterday when Mr. Singh filed them. There has been two  
20 years of litigation with discovery, all the standard request  
21 for production, interrogatories, pleadings, factual  
22 assertions, an affidavit is in the record from Mr. Chawdry,  
23 none of this has been said. So I can -- at a high-level  
24 state law bars -- state law and procedure bars what he's  
25 trying to do today.

1                   Second, the 2009 purported equity pledge  
2 agreement is invalid on its face. You can tell that, it  
3 doesn't have certain language that's missing, it's missing  
4 an assignee of the pledge. It doesn't have any procedures  
5 for this so called activations that they've invented, this  
6 term called activation that I've never heard of before.  
7 None of these procedures exist in this purported 2009 equity  
8 pledge agreement. And that's the lynch pin of why they're  
9 here, is this so-called agreement which I think you can and  
10 should ignore.

11                  And third, the 2017, purported equity pledge  
12 agreement is invalid as well. Putting aside whether it was  
13 legitimate at the time, subsequent in this in the 2019  
14 refinancing in which the parties signed new agreements,  
15 signed new documents, provided new consideration, suddenly  
16 it (indiscernible) into litigation in 2019 and whatever  
17 existed in 2017 is by the boards, so neither of these equity  
18 pledge agreements are valid. One is invalid on its face,  
19 the other invalid by (indiscernible) if it was invalid -- if  
20 it was actually valid at the time.

21                  I will stop there, subject to your questions, sir.

22                  THE COURT: Yeah. Thank you very much.

23                  Mr. Cornwell --

24                  MR. SHEPHERD: -- I know Your Honor --

25                  THE COURT: -- is there anything you wish to say?

1                   MR. SHEPHERD: -- I would like to say a couple of  
2 things in response to Mr. Volberding.

3                   THE COURT: All right. Just tell me --

4                   I'll get to you. I'll get to you.

5                   MR. SHEPHERD: -- things about the state court --

6                   THE COURT: I want to go to Mr. Cornwell next and  
7 then I'll go to --

8                   MR. SHEPHERD: Yes, sir.

9                   THE COURT: -- you, Mr. Shepherd, I promise.

10                  MR. CORNWELL: Thank you very much, Your Honor. I  
11 appreciate an opportunity -- I'll keep it very brief. I  
12 certainly agree with -- Mr. Volberding said if not all and  
13 even a whole lot of what Mr. Singh said. I think the  
14 representations about discussions we've had, about what this  
15 case might look like at this stage in bankruptcy your  
16 absolutely right. I've got nothing but positive glowing  
17 things to say about Mr. Quinn. And frankly the need, if we  
18 remain in bankruptcy for some intermediary to take the keys  
19 to the car, and I think there will be a time, if we get past  
20 today, and maybe the next hearing to discuss that. But I'll  
21 just leave that as all those statements have been said and  
22 look forward to working with the parties if we get there.

23                  I will say that the lender, Broadmark, as we're  
24 affectionally referred to, is very concerned about this  
25 last-minute foreclosure stoppage with documents that we had

1 never heard of before. And we've seen them now, because the  
2 debtor -- the purported debtor filed them last night, and  
3 we've got some real questions about whether they're  
4 effective, whether they're authentic, and frankly just the  
5 timeline of how all this happened, in light of the fact that  
6 through several different state court proceedings, as  
7 recently as July and August -- I think there were five  
8 different hearings where all or most of the parties before  
9 Your Honor, right now -- were participant relating  
10 specifically to foreclosure and the underlying loan  
11 documents between us and Grove and the second lien holder in  
12 Grove, and the pledge or authority to act was never once  
13 raised. And so we've got some concerns.

14 On top of that, Your Honor, we've got some real  
15 concerns, now that a bankruptcy has been filed what's  
16 happening at the property. I understand and very much  
17 appreciate that Mr. Kretzer has continued his role as  
18 receiver and I talked to Mr. Singh about that and I don't  
19 believe the purported debtor, I can't find the right  
20 phraseology here Your Honor has allowed that to happen  
21 without objection. I think it's frankly best for all  
22 parties involved that the properties actively managed. But  
23 anything we can do today to make sure that everybody knows  
24 their role and that the property is safe and value is  
25 protected, Broadmark would very much appreciate.

1                   THE COURT: Thank you.

2                   Mr. Shepherd.

3                   MR. SHEPHERD: Yes. Can you hear me okay, Judge?

4                   THE COURT: Yes.

5                   MR. SHEPHERD: Thank you. I wanted to clear up a  
6 couple of things Mr. Volberding represented.

7                   One of the things he said is that there's been  
8 some kind -- at least it sounded like there's been some kind  
9 of adjudication of these lawsuits. There are four lawsuits  
10 that have been filed among the parties. Two by Mr. Polk  
11 himself, one by Broadmark, and one by Daiyo. And none of  
12 the lawsuits have been fully adjudicated. There has been  
13 absolutely no ruling on any of the substantive matters in  
14 any of those cases. They were in four different courts, and  
15 the 2019 lawsuit had gotten delayed on account of COVID and  
16 an arbitration that ultimately did not go forward, because  
17 the arbitrator recused herself.

18                  And it gets back before Judge Dollinger in the  
19 189th Harris County District Court. And all of the parties  
20 are now, by virtue of a motion that Daiyo filed to try and  
21 streamline the litigation, because it was in four different  
22 courts -- over objection from all parties, Daiyo  
23 consolidated, sought to consolidate all four cases into the  
24 first filed lawsuit in Judge Dollinger's court in the 189.  
25 All of those cases are now consolidated, those cases were

1 going forward, and Broadmark with full steam ahead was  
2 attempting to foreclose, even though Mr. Polk had sued Daiyo  
3 alleging forgery, sued in the separate lawsuit, which  
4 actually we just recently found out about, because nobody  
5 had even disclosed this to us.

6 Second lawsuit Grove filed was against the title  
7 company, alleging that the title company forged documents.  
8 So all the people that forged documents, but nevertheless he  
9 admits he still owes three-and-a-half million dollars to  
10 Daiyo. Even at one point was alleging that the Broadmark  
11 loan documents were also forged. So there's a lot of things  
12 being bounced around out there, but Mr. Volberding says  
13 there's been some kind of ruling that were against Daiyo or  
14 something has been adjudicated. There is absolutely not a  
15 single thing that has been adjudicated in any of these cases  
16 except for the denial of temporary injunction. Which while  
17 we still disagree with that, all of the in fighting going on  
18 with the parties, that's the only thing that's been ruled  
19 on. But there's been absolutely no adjudication of any  
20 different substance of fact in any of these cases.

21 THE COURT: Thank you.

22 Anyone else wish to address the Court?

23 MR. TANG: If I may real briefly, Your Honor.

24 THE COURT: Yes, sir. Just state your name for  
25 the record, just we've got a clean a record.

1                   MR. TANG: Thank you, Your Honor. David Tang for  
2 the -- how do I word this -- for Harold Polk and Grove  
3 Enterprises before the (indiscernible) assignment was -- the  
4 (indiscernible) before the assignment.

5                   Your Honor, I want to clarify just a little bit of  
6 what Mr. Sheperd had said. Mr. Branch Shepherd had said.  
7 There's actually -- let me start with a 10,000 foot and go  
8 down, maybe that's easier. I think that's how this is  
9 proceeding.

10                  Your Honor, broadly speaking there's two equity  
11 pledge assignments, 2017 and 2019. I'm going to take the  
12 2019, first because, in relation to time, it relates more  
13 this transaction, because the transaction (indiscernible)  
14 over the loss of most (indiscernible) is around that time.  
15 The 2017 pledge, you know, had nothing to do with this  
16 building -- the 2019 pledge was purported executed on  
17 January 17th. We're saying that's a forgery by itself.  
18 That equity pledge agreement. The equity -- the 2019,  
19 equity pledge agreement is condition on a payment of a  
20 promissory note, Your Honor --

21                  THE COURT: Hold on a second, I want to --

22                  MR. TANG: -- that was reported --

23                  THE COURT: -- I want to make sure I hear you  
24 correctly. You're saying that which document is a forgery?

25                  MR. TANG: The 2019 equity pledge agreement, Your

1 Honor.

2 THE COURT: Okay. Thank you.

3 MR. TANG: The one that I think everybody's been  
4 talking about. The one that's more in relation to the  
5 actual property that we manage right now.

6 THE COURT: Okay. Okay.

7 MR. TANG: And then so the 2019 equity pledge  
8 agreement, you know, is I guess was activated I guess, it  
9 comes into effect if my client defaults on a promissory  
10 note. What it says in the equity pledge agreement if I  
11 remember it right. And the promissory note is worth an  
12 amount roughly 3.5 million. That promissory note, Your  
13 Honor, which is Exhibit No. 5 I believe in Mr. Singh's  
14 response to the receiver's motion to appear, that -- clearly  
15 notarized by a man named Richard Milliman (phonetic), Your  
16 Honor, is his name.

17 I took Mr. Milliman's deposition, one of these  
18 companion lawsuits that Mr. Shepherd was talking about. If  
19 I remember correctly he says I don't know what this document  
20 is, I don't remember notarizing it. I said let me see a  
21 notary book. I did not keep a notary book, David, so I  
22 can't help -- David, me, David Tang that's in question. He  
23 said I did not keep a notary book. Well he says, I don't  
24 recognize this document. And that's my signature, that's my  
25 stamp, but I don't remember seeing it. And he goes on to

1 detail -- why don't you remember signing the -- he goes  
2 promissory notes aren't typically notarized in the course of  
3 business. You know, (indiscernible) my client before  
4 (indiscernible) I did not sign that promissory note for \$3.5  
5 million. That's not a signature. But it's notarized like  
6 it was. The notary has stated in his deposition -- I don't  
7 remember notarizing that. I don't have a book to even show  
8 you, David, that Mr. Polk was in front of me when I  
9 notarized it -- purportedly notarized it, right.

10 So what's just a little bit more muddled than this  
11 is as I sued the title company, Your Honor, right, they  
12 produced another promissory note around the same day for  
13 \$1.5 million. Now I'm getting a little bit closer to the  
14 ground level here, Your Honor, but I just feel it's  
15 important to talk about that particular set of  
16 circumstances. There's another promissory note made to  
17 Daiyo's favor very much like the 3.5 million that's  
18 purportedly signed by my client, but the notary -- in there,  
19 right, is blank. But they purport it has a signed  
20 signature, but it has a different amount on there right.  
21 And I believe it's dated January the 11th.

22 So the equity pledge agreement that they're  
23 putting in front of you, Your Honor, the 2019, is based on  
24 \$3.5 million note that the notary cannot verify that he  
25 notarized, has suspicions about it, and (indiscernible)

1 didn't sign it and then we look at the same week of that  
2 transaction, there's a second promissory note that is nearly  
3 identical to the one that they produced for 1.5 million that  
4 purportedly has my client's signature, but the notary stamp  
5 there is a notary (indiscernible) is not filled in nor  
6 signed. But it's the same (indiscernible) that was  
7 purportedly signed on the 18th. That is -- and I'm not  
8 being critical, Your Honor --

9 THE COURT: Okay.

10 MR. TANG: As I'll now in closing -- documents --

11 THE COURT: Hold on. Hold on. I think there's  
12 some background noise, if everyone can please put your  
13 phones on mute. Not you Mr. Tang, just everyone else, I  
14 think I heard some papers rattling. I couldn't hear you to  
15 well. Okay. Go ahead, sir. In closing.

16 MR. TANG: No. Like I said -- the person  
17 (indiscernible) everything I just wish the title company and  
18 everybody would use staples. There seems to be a lot of  
19 documents floating around these days, right.

20 THE COURT: Okay. Thank you, sir.

21 MR. TANG: And so -- and so there seems to be two  
22 conflicting notes that remain the basis of the pledge,  
23 different numbers, the bottom line is my client didn't sign  
24 either one of them. The one that's notarized, the notary  
25 has said I don't even remember notarizing that, I don't

1 remember Harold being in front of me on the 17th or the  
2 18th. Because Harold was in front of me on the 11th not the  
3 17th or 18th. And so up on a macro level and a little bit  
4 down into the rows that's our contention on the 2019 pledge  
5 agreement, Your Honor.

6 THE COURT: Okay. Thank you.

7 MR. TANG: Do you have any questions for me, Your  
8 Honor -- 2017 or --

9 THE COURT: No. No. I want to hear from the U.S.  
10 Trustee. Mr. Ruff.

11 MR. RUFF: Good morning, Your Honor. So I think  
12 our view, really I think the proposal by Mr. Singh to --  
13 this authority to file is a gating issue, anything else  
14 should probably be pushed off until that is resolved. And  
15 then, you know, we would be happy to take those other  
16 matters in order.

17 THE COURT: Here's what I'm going to do folks, and  
18 here's the gating issue for me. Is that there was a  
19 petition filed on the 7th and it was unsigned by both the  
20 client and the lawyer. And that essentially the filing of  
21 that petition initiated the automatic stay, right? But  
22 there was no authority -- no one signed a petition under  
23 penalty of perjury, but the lawyers filed and so that's a  
24 certification in and of itself. And there's dating errors  
25 on the petition itself. Those errors then continue to the

1 filing on the 13th. From there those documents are signed  
2 under penalty of Perjury by both Mr. Chang and Ms. Tran --

3 But folks if someone could put their phones on  
4 mute, I'm really asking. The reality is folks is that --

5 UNIDENTIFIED FEMALE: Okay. Oh. Okay.

6 THE COURT: Just a second.

7 UNIDENTIFIED FEMALE: -- we were going to be on  
8 this though, I was on the right link, right? Okay. Good.  
9 All right. All right.

10 THE COURT: I apologize.

11 UNIDENTIFIED FEMALE: Well yeah -- hang on let's  
12 see what -- let me see if there's anything on --

13 THE COURT: Just a second folks.

14 UNIDENTIFIED FEMALE: -- Patrick know.

15 UNIDENTIFIED MALE: I didn't see them on there --  
16 did you see them on there?

17 UNIDENTIFIED FEMALE: No.

18 UNIDENTIFIED MALE: Let's see -- no they're not on  
19 there anyways.

20 THE COURT: That might have done it. Can  
21 everybody still hear me? Okay. Appreciate it.

22 So bankruptcy rule 1008 says that all petitions  
23 shall be verified, and the initial one wasn't verified. But  
24 it might have saved everyone from me asking some really hard  
25 questions about things that are to come. Because all

1 petitions are signed under penalty of perjury by and under  
2 rule 90(11) for the attorneys in which 90(11) (b) says that  
3 by presenting to the Court whether by signing, filing a  
4 petition, or another motion the attorney is certifying it  
5 has not been presented for any improper purpose, but it's  
6 signed to the best of the presenter's knowledge,  
7 information, and belief formed after an inquiry reasonable  
8 under the circumstances that it wasn't filed for  
9 frivolousness, for an improper purpose, to harass, that the  
10 claims in the legal contentions therein are supported by  
11 law. That the allegations and other factual contentions  
12 have evidentiary support, or specifically so identified or  
13 likely to have evidentiary support after a reasonable  
14 opportunity for further investigation or discovery, and any  
15 denials are warranted. Right.

16 And filing a bankruptcy petition is a little  
17 different than just filing a motion in which can be  
18 corrected. So, I'm just saying this for the non-bankruptcy  
19 folks. Typically bankruptcy rules require that one file a  
20 heading to look in a certain way or to contain a proposed  
21 order -- all those can be corrected without violating 90(11)  
22 but the rules -- when one looks at the advisory committee  
23 rules and I'm looking at the ones in 1997 say that the safe  
24 harbor doesn't apply to a petition, because -- right the  
25 automatic stay comes in has far reaching implications,

1 right? Because now creditors can't exercise it, so it's a  
2 little different than fixing a heading or adding a proposed  
3 order later or you know, adding another signature. So that  
4 means a lot.

5 So to me there was a filing on the 7th that was  
6 improper, and it was later attempted to be amended, but you  
7 can't amend what should have never existed in the first  
8 place. So I'm dismissing this bankruptcy case for failure  
9 to file a petition correctly on the 7th that had  
10 implications through the automatic stay.

11 If folks decide to file this case again, I just  
12 want everybody to really look at what they think they have,  
13 on both sides, and really look at what the assignments say  
14 and what folks are telling me that they say, and what those  
15 pledges say on its face, and if there's a default what  
16 people get under the 2019 and how the membership interests  
17 are defined and if there's some other documents out there, I  
18 don't --

19 You know, Mr. Tang you talked about you know,  
20 really, really -- I call it some real serious territory.  
21 And everybody should really take a hard look because folks  
22 are going to start -- if this case gets filed again -- and  
23 it may get filed this afternoon in Houston, I don't know --  
24 but everybody better take a hard look, because I'll be  
25 looking really hard at what folks are alleging on the

1 petition and who signed the petition, and what authority  
2 they think they have and whether it's reasonable, and what  
3 are the implications of filing a petition, and what  
4 information they've done and how they did it.

5 I want folks to really look at the -- I want folks  
6 to look at the Texas UCC law, I want folks to look exactly  
7 at these -- what they're going to ask me to do. And if  
8 other folks are going to make allegations in this case about  
9 fraud, right, I'm going to take those allegations really  
10 serious as well. And everybody -- and I don't know where  
11 this goes, but I think everybody ought to take a really hard  
12 look, because if there is fraud, that's going to have to get  
13 addressed, right? And it's going to get addressed in a  
14 manner that I'm not sure folks are going to want -- you  
15 know, I'll deal with it.

16 If there are allegations -- unfounded allegations  
17 of fraud and they're just being thrown around, then that's  
18 going to get addressed as well. I think I'm giving everyone  
19 a fair opportunity, but this case cannot continue because  
20 the petition wasn't originally signed correctly and 1008 --  
21 Bankruptcy Rule 1008 has to mean something.

22 You can't file an unsigned petition and then you  
23 know, seven days later correct it, right? Because you know,  
24 it just throws -- what do the -- what do the schedules do,  
25 when did the automatic stay really go into effect? And

1 folks are really acting like it was the seventh, but that's  
2 really not the case. But maybe creditors have the ability  
3 to exercise remedies past the seventh and were unable to do  
4 it because there was an unsigned petition, and that has  
5 consequences.

6 And so I want everyone to really do the diligence  
7 that is required and really look at these documents the way  
8 I have. And I'm telling you, some of you-all are reading  
9 these documents in a way that I just -- I don't -- when I  
10 just look at the plain language of them, I don't see it. So  
11 everybody has to get really comfortable about what you did  
12 and the steps that you took. And whether they're permissive  
13 or not.

14 Maybe's there a reasonable basis for it. Can it  
15 get into evidence, no one cited a statute to me, so we never  
16 got there? So I don't need to start asking really hard  
17 questions on all sides, but maybe everybody can take it and  
18 do the diligence now, because this case should have never --  
19 never even get here, because there wasn't an original  
20 petition that could not be amended. That's the way I read  
21 bankruptcy rule 1008.

22 So Mr. Singh, you know, I take very seriously that  
23 your firm -- you know, you say it was a mistake or an error  
24 and I get it, I mean that happens. But here's the chance  
25 and you said you got the docs in a timely manner, and you

1 were relying on corporate counsel and all that, I just  
2 everybody ought to know that when they sign something -- and  
3 I'm not just talking to Mr. Singh, I'm talking to everyone  
4 here, because folks are filing some really strong words with  
5 some really strong language in each one of these pleadings  
6 and if you sign it, I'm going to hold you to it. And maybe  
7 there's a reasonable basis to do it, maybe there's not.  
8 That's not for me today.

9 So I know everybody had a bunch of evidence  
10 presented, but I think the bankruptcy rules mean something  
11 and I've got to -- and to me a voluntary petition may have  
12 helped some parties today as a matter of fact based upon  
13 where this could have gone. And I don't have to ask  
14 questions of a bunch of different parties today.

15 So I'm just going to enter a very short order  
16 saying for the reasons stated on the record this bankruptcy  
17 case is dismissed. And if it gets refiled, we'll take up  
18 all these issues. And we'll have the hearing that we talked  
19 about, we just can't have it today. I'm uncomfortable  
20 allowing the automatic stay to have continued from January  
21 -- excuse me, from September the 7th, because technically  
22 that meant that the schedules were due today or yesterday,  
23 and we never got that. And I don't want folks filing more  
24 things under penalty of perjury in responding to it, or  
25 making stronger allegations or having hearings in which

1 folks are going to -- you know, start throwing around words.  
2 Everybody you've got a chance to go do some diligence,  
3 everybody on all sides. And maybe we see each other, maybe  
4 we don't. I wish everyone a good day.

5 I'll just enter a very short order, thank you.

6 We're adjourned.

7 (Proceeding adjourned at 11:47 a.m.)

8 \* \* \* \* \*

9 *I certify that the foregoing is a correct*  
10 *transcript to the best of my ability due to the condition of*  
11 *the electronic sound recording of the ZOOM/telephonic*  
12 *proceedings in the above-entitled matter.*

13 /S/ MARY D. HENRY

14 CERTIFIED BY THE AMERICAN ASSOCIATION OF  
15 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337  
16 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
17 JTT TRANSCRIPT #64583

18 DATE FILED: SEPTEMBER 28, 2021

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